

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

STEPHANIE A. CUMMINGS,

Plaintiff,

vs.

SMITHFIELD FRESH MEATS
CORP.,

Defendant.

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Case No. 4:22-cv-3026

**DEFENDANT SMITHFIELD FRESH MEATS CORP.'S
NOTICE OF REMOVAL**

Please take notice that pursuant to 28 U.S.C. §§ 1331, 1441(a), and 1446, Defendant Smithfield Fresh Meats Corp. (“Smithfield”) hereby removes this action from the District Court of Saline County, Nebraska, to the United States District Court for the District of Nebraska. In support of this Notice of Removal, Smithfield avers as follows:

PROCEDURAL HISTORY

1. Plaintiff Stephanie Cummings filed a Complaint in the District Court of Saline County, Nebraska against Smithfield (the “State Court Action”). A true and accurate copy of the Complaint served in the State Court Action is attached as Exhibit 1.¹

2. On January 25, 2022, Plaintiff served Smithfield by certified mail through its registered agent with a Summons and a copy of the Complaint. A true and accurate copy of the Summons served in the State Court Action is attached as Exhibit 2.

3. Exhibits 1 and 2 constitute all process, pleadings, and orders that were served on Smithfield in the State Court Action. A true and accurate copy of the Register of Actions in the State Court Action as of February 23, 2022 is attached as Exhibit 3.

¹ Plaintiff’s Complaint is undated.

JURISDICTION AND BASIS FOR REMOVAL

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1441(a) because the matter in controversy arises under federal law.

5. A case is properly removed if it could have been originally filed in federal district court. *Mensah v. Owners Ins. Co.*, 951 F.3d 941, 943 (8th Cir. 2020); *In re Otter Tail Power Company*, 116 F.3d 1207, 1213 (8th Cir. 1997).

6. In her Complaint, Plaintiff alleges that Smithfield discriminated against her on the basis of her sex and retaliated against her in violation of Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e *et seq.*) by failing to adequately address Plaintiff's allegations of sexual harassment, and removing Plaintiff from her job assignment after she reported being sexually harassed. Plaintiff's Complaint does not allege any violations of Nebraska state law. *See* Complaint ¶¶ 9, 12-16, 18, 22.

7. Because the causes of action set forth in Plaintiff's Complaint arise under federal law, removal is appropriate. *See, Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987) ("The presence or absence of federal-question jurisdiction is governed by the 'well-pleaded complaint rule,' which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint") (internal citation omitted); *Crews v. General American Life Ins. Co.*, 274 F.3d 502, 504 (8th Cir. 2001) ("A defendant has a right to remove a case from state to federal court if the plaintiff's cause of action arose under federal law").

8. Removal to this district is proper because the United States District Court for the District of Nebraska embraces Saline County, Nebraska. 28 U.S.C. §§ 107, 1441(a).

9. Removal is proper because this Notice of Removal is timely filed within 30 days of service of the Summons and Complaint on Defendant. 28 U.S.C. § 1446(b).

10. In accordance with 28 U.S.C. § 1446(d), after filing this Notice of Removal Smithfield will promptly serve written notice of this Notice of Removal on counsel for Plaintiff and file the same with the Clerk of the District Court of Saline County, Nebraska.

NON-WAIVER OF DEFENSES

11. By removing this action from the District Court of Saline County, Nebraska, Smithfield does not waive any defenses available to it.

12. By removing this action from the District Court of Saline County, Nebraska, Smithfield does not admit any of the allegations in Plaintiff's Complaint.

WHEREFORE, Defendant Smithfield Fresh Meats Corp. removes the above-captioned action from the District Court of Saline County, Nebraska to the United States District Court for the District of Nebraska.

Dated: February 24, 2022

Respectfully submitted on behalf of
Smithfield Fresh Meats Corp.

POLSINELLI PC

/s/ Jason N.W. Plowman

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Attorneys for Defendant Smithfield Fresh
Meats Corp.

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of February 2022, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system. A notification of such filing (NEF) will be sent to the following counsel of record for the Plaintiff via first-class mail:

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Attorneys for Plaintiff

/s/ Jason N.W. Plowman

Attorney for Defendant